



July 29, 1999

Ms. Elizabeth Dierdorf  
Assistant City Attorney  
City of Fort Worth  
1000 Throckmorton Street  
Fort Worth, Texas 76102

OR99-2129

Dear Ms. Dierdorf:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 126309.

The City of Fort Worth (the "city") received a request for tapes and transcripts of a civil service suspension hearing concerning a named individual. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.

Our review of the tapes and transcripts submitted to this office indicates that the suspension hearing was a result of a sexual harassment investigation. We note that the identity of a victim of alleged sexual assault is generally protected from disclosure in order to protect the common-law privacy of the victim. *See Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied)(court addressed applicability of common-law privacy to sexual harassment investigation files). However, the victim's common-law privacy interest is not an issue in this particular request because the requestor in this situation is the victim of the alleged harassment.<sup>1</sup>

Our review indicates that some of the taped information does contain information protected by common-law privacy, however. The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in sections 552.101 or section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d

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<sup>1</sup>Government Code § 552.023(a) provides that an individual "has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." We note, however, that some of the information at issue, including identifying information about the victim, may not be disclosed to the general public.

546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). Although most of the information requested relates to the job performance and work behavior of a former public employee, Open Records Decision Nos. 470 at 4 (1987) (public has legitimate interest in job performance of public employees); 423 at 2 (1984) (scope of public employee privacy is narrow), the portions of the tapes that describe in specific detail the illness and health condition of the former employee are protected from disclosure to protect the individual's common-law privacy interests. See Open Records Decision No. 262 (1980).

We will address your section 552.103(a) argument regarding the remaining portions of the tapes and transcripts. To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *University of Texas Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.--Austin, 1997, no pet.), *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). You contend that litigation is reasonably anticipated because the opposing party in the suspension hearing has filed a notice of appeal. However, once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). In this situation, it appears that the opposing party or his counsel were present at each hearing that was taped or transcribed.<sup>2</sup> Because the opposing party or his counsel had access to the requested information, section 552.103(a) is inapplicable in this situation. Except for the portions that must be redacted as explained previously, the tapes and transcripts at issue must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

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<sup>2</sup>We note that there is information concerning a hearing about the requestor. The opposing party in the suspension hearing and his counsel apparently had access to this tape recording as well.

Ref: ID# 126309

Encl. Submitted documents